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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 140214140-4140-01]

RIN 0648-BD92

Fisheries off West Coast States; Pacific Coast Groundfish Fishery; Seabird Avoidance Measures

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: This proposed rule would implement a Seabird Avoidance Program in the Pacific Coast Groundfish Fishery. The proposed rule was recommended by the Pacific Fishery Management Council (Council) in November 2013 and is specifically designed to minimize the take of ESA-listed short-tailed albatross (*Phoebastria albatrus*). A 2012 U.S. Fish and Wildlife Service Biological Opinion required NMFS to initiate implementation of regulations within 2 years mandating the use of seabird avoidance measures by vessels greater than or equal to 55 feet length overall (LOA) using bottom longline gear to harvest groundfish. The seabird avoidance measures, including streamer lines that deter birds from ingesting baited hooks, are modeled after a similar regulatory program in effect for the Alaskan groundfish fishery.

DATES: Comments on this proposed rule must be received on or before [Insert date 30 days after date of publication in the FEDERAL REGISTER].

ADDRESSES: You may submit comments on this document, identified by NOAA-NMFS-2014-0099, by any of the following methods:

- Electronic Submission: Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2014-0099 click the “Comment Now!” icon, complete the required fields, and enter or attach your comments.
- Mail: Submit written comments to William W. Stelle, Jr., Regional Administrator, West Coast Region, NMFS, 7600 Sand Point Way NE, Seattle, WA 98115-0070; Attn: Steve Copps.
- Fax: 206-526-6736; Attn: Steve Copps.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on www.regulations.gov without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Steve Copps, 206-526-6158; (fax) 206-526-6736; steve.copps@noaa.gov.

SUPPLEMENTARY INFORMATION:

Background

The purpose of the proposed rule is to reduce interactions between ESA-listed seabirds and groundfish longline gear. Many seabirds attack baited hooks as the longline is being set and become lethally hooked and drowned. The proposed rule would amend the regulations

governing the Pacific Coast Groundfish Fishery (fishery) to require seabird avoidance measures—specifically the use of streamer lines and related provisions similar to those currently mandated in the Alaskan groundfish fishery—by vessels 55 ft LOA or greater in the bottom longline fishery.

The proposed rule is needed to minimize takes of endangered short-tailed albatross and comply with a 2012 Biological Opinion (Opinion) issued by the U.S. Fish and Wildlife Service. The 2012 Opinion evaluated the risks of continued operation of the Pacific Coast Groundfish Fishery on ESA-listed seabirds, including short-tailed albatross. The 2012 Opinion included a Term and Condition requiring NMFS to promulgate regulations mandating the use of streamer lines by certain longline vessels 55 feet LOA or greater, patterned on the Alaska streamer line regulations. Accordingly, for the fishery to be exempt from ESA section 9 prohibition regarding the take of a listed species, NMFS must initiate implementation of streamer line regulations by November 21, 2014. The 2012 Opinion anticipates the yearly average take of one short-tailed albatross killed from longline hooks or trawl cables. As the short-tailed albatross population is expanding, it is expected to result in more interactions with the Pacific Coast Groundfish Fisheries. This action would implement one of the Terms and Conditions of the 2012 Opinion and reduce the risk of exceeding the take limits of short-tailed albatross contained in the Opinion, which in turn would reduce the risk of economic harm to the fishing industry that could result from the incidental take limit being exceeded.

The proposed rule would require streamer lines, sometimes referred to as tori or bird-scaring lines, to be deployed as the longline gear is being set. A streamer line effectively fences off the longline from seabird interactions. The streamer line is a line (typically 50-fathoms or 90-meters long) that extends from a high point near the stern of the vessel to a drogue (usually a

buoy with a weight). As the vessel moves forward the drogue creates tension in the line producing a span from the stern where the streamer line is aloft. The aloft section includes streamers made of UV protected, brightly colored tubing spaced every 16 feet (5 meters). Streamers must be heavy enough to maintain a near-vertical fence in moderate to high winds. Individual streamers should extend to the water to prevent aggressive birds from getting to the groundline. When deployed in pairs—one from each side of the stern—streamer lines create a moving fence around the sinking groundline reducing or eliminating bird interactions. Streamer lines have been effective at reducing seabird bycatch in fisheries throughout the world, including Alaskan fisheries that are similar to Pacific Coast Groundfish Fisheries.

In addition to this proposed regulatory action, NMFS has worked in collaboration with academia, NGOs, the fishing industry, coastal tribes, and Washington Sea Grant to develop a multi-dimensional seabird conservation initiative for the Pacific Coast Groundfish Fishery. The initiative includes research, industry outreach, and making free streamer lines available to any Pacific Coast longliner to encourage voluntary use. The importance of the initiative was emphasized in 2011 by the take of a short-tailed albatross in the groundfish longline fishery off Oregon.

This proposed rule would amend the regulations governing the Pacific Coast groundfish fishery to require seabird avoidance measures—specifically the use of streamer lines and related provisions currently mandated in the Alaskan groundfish fishery (50 CFR 679.24(e))—by vessels 55 ft LOA or greater using bottom longline gear pursuant to the Pacific Coast Groundfish Fishery Management Plan (FMP). In sum, the regulation would:

- Require the use of streamer lines in the commercial longline fishery of the Pacific Coast Groundfish Fishery for non-tribal vessels 55 feet in length or greater;

- Require vessels to deploy one or two streamer lines depending on the type of longline gear being set;
- Require that streamer lines meet technical specifications and be available for inspection; and,
- Allow for a rough weather exemption from using streamer lines for safety purposes. The threshold for the rough weather exemption is a Gale Warning as issued by the National Weather Service.

The proposed rule is designed to be consistent with the requirements of the Opinion and responsive to issues raised through the public process and consultation with experts.

Rough-weather Exemption

NMFS is proposing a rough-weather exemption to the streamer line regulations to address safety-at-sea concerns. NMFS consulted with the longline industry and the Council to identify a weather threshold where the deployment of streamer lines becomes hazardous. Based on these consultations, a National Weather Service Gale Warning is being proposed as the most appropriate threshold. When a Gale Warning is issued by the National Weather Service, fishermen would not be required to deploy streamer lines. This is designed to maintain safety at sea and effective reduction of seabird bycatch.

Classification

Pursuant to section 304(b)(1)(A) of the MSA, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the Pacific Coast Groundfish FMP, other provisions of the MSA, and other applicable law, subject to further consideration after public comment.

NMFS and the Council prepared a draft Environmental Assessment (EA) for this

regulation that is available on the Council's website at <http://www.pcouncil.org/> or available from NMFS (see ADDRESSES).

The Office of Management and Budget has determined that this proposed rule is not significant for purposes of Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. As a result, a regulatory flexibility analysis is not required, and none has been prepared. The analysis of the Chief Counsel was as follows:

The proposed action is needed to minimize takes of endangered short-tailed albatross and comply with the 2012 Opinion issued by the U.S. Fish and Wildlife Service, as described previously. This action would implement one of the Terms and Conditions of the Opinion and reduce the risk of exceeding the take limits of short-tailed albatross, which in turn would reduce the risk of economic harm to the fishing industry that could result from the incidental take limit being exceeded.

The proposed rule is not expected to have significant direct or indirect socioeconomic impacts because cost of the required streamer lines is currently being subsidized 100% by NMFS. If this subsidy program ends, the cost of the streamer lines would be negligible at \$300 per pair. The cost is less than 0.1% of the average affected vessel's 2013 annual average ex-vessel revenue.

Effective July 14, 2014, a business involved in finfish harvesting is a small business if it is independently owned and operated and not dominant in its field of operation (including its affiliates), and if it has combined annual receipts not in excess of \$20.5 million for all its

affiliated operations worldwide (See 79 FR 33647).

NMFS conducted its analysis for this action using the new size standard. The affected entities by this rule are those vessels 55 ft LOA or larger that participate in the fishery or may seek to participate in the fishery. During 2013, 293 vessels used longline gear. Forty of these vessels were 55 ft LOA or larger of which 25 vessels participated in the groundfish fishery. When ranked according to Pacific Coast ex-vessel revenues, the top vessel had revenues far less than \$2.0 million and the top 3 vessels averaged \$1.3 million in ex-vessel revenues. Average vessel revenues for the affected vessels in 2013 are about \$408,000. The average annual per vessel revenue based on Pacific Coast landings information and other information is well below \$20.5 million; therefore, all of these vessels are considered small businesses under the RFA. Because each affected vessel is a small business, this proposed rule has an equal effect on all of these small entities, and therefore will impact a substantial number of these small entities in the same manner. Therefore this rule will not create disproportionate costs between small and large vessels/businesses.

For the reasons above, the Chief Counsel for Regulation certified that this rule will not have a significant economic impact on a substantial number of small entities.

NMFS issued Biological Opinions under the Endangered Species Act (ESA) on August 10, 1990, November 26, 1991, August 28, 1992, September 27, 1993, May 14, 1996, and December 15, 1999 pertaining to the effects of the Groundfish FMP fisheries on Chinook salmon (Puget Sound, Snake River spring/summer, Snake River fall, upper Columbia River spring, lower Columbia River, upper Willamette River, Sacramento River winter, Central Valley spring, California coastal), coho salmon (Central California coastal, southern Oregon/northern California coastal), chum salmon (Hood Canal summer, Columbia River), sockeye salmon

(Snake River, Ozette Lake), and steelhead (upper, middle and lower Columbia River, Snake River Basin, upper Willamette River, central California coast, California Central Valley, south/central California, northern California, southern California). These biological opinions have concluded that implementation of the FMP is not expected to jeopardize the continued existence of any endangered or threatened species under the jurisdiction of NMFS, or result in the destruction or adverse modification of critical habitat.

NMFS issued a Supplemental Biological Opinion on March 11, 2006 concluding that neither the higher observed bycatch of Chinook in the 2005 whiting fishery nor new data regarding salmon bycatch in the groundfish bottom trawl fishery required a reconsideration of its prior “no jeopardy” conclusion. NMFS also reaffirmed its prior determination that implementation of the FMP is not likely to jeopardize the continued existence of any of the affected ESUs. Lower Columbia River coho (70 FR 37160, June 28, 2005) and Oregon Coastal coho (73 FR 7816, February 11, 2008) were recently relisted as threatened under the ESA. The 1999 biological opinion concluded that the bycatch of salmonids in the Pacific whiting fishery were almost entirely Chinook salmon, with little or no bycatch of coho, chum, sockeye, and steelhead.

On December 7, 2012, NMFS completed a biological opinion concluding that the groundfish fishery is not likely to jeopardize non-salmonid marine species including listed eulachon, green sturgeon, humpback whales, Steller sea lions, and leatherback sea turtles. The opinion also concluded that the fishery is not likely to adversely modify critical habitat for green sturgeon and leatherback sea turtles. An analysis included in the same document as the opinion concluded that the fishery is not likely to adversely affect green sea turtles, olive ridley sea turtles, loggerhead sea turtles, sei whales, North Pacific right whales, blue whales, fin whales,

sperm whales, Southern Resident killer whales, Guadalupe fur seals, or the critical habitat for Steller sea lions.

As Steller sea lions and humpback whales are also protected under the Marine Mammal Protection Act (MMPA), incidental take of these species from the groundfish fishery must be addressed under MMPA section 101(a)(5)(E). West coast pot fisheries for sablefish are considered Category II fisheries under the MMPA's List of Fisheries, indicating occasional interactions. All other west coast groundfish fisheries, including the trawl fishery, are considered Category III fisheries under the MMPA, indicating a remote likelihood of or no known serious injuries or mortalities to marine mammals. On February 27, 2012, NMFS published notice that the incidental taking of Steller sea lions in the West Coast groundfish fisheries is addressed in NMFS' December 29, 2010 Negligible Impact Determination (NID) and this fishery has been added to the list of fisheries authorized to take Steller sea lions. 77 FR 11493 (Feb. 27, 2012). NMFS is currently developing MMPA authorization for the incidental take of humpback whales in the fishery.

On November 21, 2012, the U.S. Fish and Wildlife Service (FWS) issued a biological opinion concluding that the groundfish fishery will not jeopardize the continued existence of the short-tailed albatross. The 2012 Opinion evaluated the risks of continued operation of the Pacific Coast groundfish fishery on ESA-listed seabirds, including short-tailed albatross. The 2012 Opinion included a Term and Condition requiring NMFS to promulgate regulations mandating the use of streamer lines by longline vessels 55 feet LOA or greater, patterned on the Alaska streamer line regulations. Accordingly, for the fishery to be exempt from the ESA section 9 prohibition regarding take of a listed species, NMFS must initiate implementation of streamer line regulations by November 21, 2014. The 2012 Opinion anticipates the yearly

average take of one short-tailed albatross killed from longline hooks or trawl cables. As the short-tailed albatross population is expanding, it is expected to result in more interactions with the Pacific Coast Groundfish Fisheries. This action would implement one of the Terms and Conditions of the 2012 Opinion and reduce the risk of exceeding the take limits of short-tailed albatross, which in turn would reduce the risk of economic harm to the fishing industry that could result from the incidental take limit being exceeded. The FWS also concurred that the fishery is not likely to adversely affect the marbled murrelet, California least tern, southern sea otter, bull trout, or bull trout critical habitat.

This proposed rule does not contain a collection-of-information requirement subject to review and approval by OMB under the Paperwork Reduction Act (PRA).

Public comment is sought on all aspects of this proposed rule. Send comments to NMFS, West Coast Region at the ADDRESSES above.

This proposed rule was developed after meaningful collaboration, through the Council process, with the tribal representative on the Council. The proposed regulations have no direct effect on the tribes.

List of Subjects in 50 CFR Part 660

Fisheries.

Dated: September 4, 2014.

Eileen Sobeck,
Assistant Administrator for Fisheries,
National Marine Fisheries Service.

For the reasons stated in the preamble, NMFS proposes to amend 50 CFR part 660 as follows:

PART 660—FISHERIES OFF WEST COAST STATES

1. The authority citation for part 660 continues to read as follows:

Authority: 16 U.S.C. 1801 et seq. and 16 U.S.C. 773 et seq.

2. In § 660.11, add paragraph (6)(i)(A) to the definition of “Fishing gear” and add the definition for “Seabird” in alphabetical order to read as follows:

§ 660.11 General definitions.

* * * * *

Fishing gear * * *

(6) * * *

(i) * * *

(A) Snap gear means a type of bottom longline gear where the hook and gangion are attached to the groundline using a mechanical fastener or snap.

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Seabird means those bird species that habitually obtain their food from the sea below the low water mark.

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3. In § 660.12, paragraph (a)(15) is added to read as follows:

§ 660.12 General groundfish prohibitions.

(a) * * *

(15) Fail to comply with the requirements of the Seabird Avoidance Program described in § 660.61 when commercial fishing for groundfish using bottom longline gear.

* * * * *

4. Add § 660.61 to read as follows:

§ 660.61 Seabird Avoidance Program.

This section contains the requirements of the Seabird Avoidance Program.

(a) Purpose. The purpose of the Seabird Avoidance Program is to minimize interactions between fishing gear and seabird species, including short-tailed albatross (Phoebastria albatrus).

(b) Applicability. The requirements specified in paragraph (c) of this section apply to the following fishing vessels:

(1) Vessels greater than or equal to 55 ft (16.8 m) LOA engaged in commercial fishing for groundfish with bottom longline gear as defined in § 660.11 pursuant to the gear switching provisions of the Limited Entry Trawl Fishery, Shoreside IFQ Program as specified in § 660.140(k), or pursuant to Subparts E or F of this Part, except as provided in paragraph (b)(2) of this section.

(2) Exemptions. The requirements specified in paragraph (c) of this section do not apply to Pacific Coast treaty Indian fisheries, as described at § 660.50, or to anglers engaged in recreational fishing for groundfish, as described in Subpart G of this Part.

(c) Seabird Avoidance Requirements.

(1) General Requirements. The operator of a vessel described in 660.61(b)(1) must:

(i) Gear onboard. Have onboard the vessel seabird avoidance gear as specified in paragraph (c)(2) of this section;

(ii) Gear inspection. Upon request by an authorized officer or observer, make the seabird avoidance gear available for inspection;

(iii) Gear use. Use seabird avoidance gear as specified in paragraph (c)(2) of this section that meets the standards specified in paragraph (c)(3) of this section while bottom longline and snap gears are being deployed.

(iv) Handling of hooked short-tailed albatross.

(A) Safe release of live short-tailed albatross. Make every reasonable effort to ensure short-tailed albatross brought on board alive are released alive and that, whenever possible, hooks are removed without jeopardizing the life of the bird(s). If the vessel operator determines, based on personal judgment, that an injured bird is likely to die upon release, the vessel operator is encouraged to seek veterinary care in port. Final disposition of an injured bird will be with a Wildlife Rehabilitator. If needed, phone the U.S. Fish and Wildlife Service at 503-231-6179 to assist in locating a qualified Wildlife Rehabilitator to care for the short-tailed albatross.

(B) Dead short-tailed albatross must be kept as cold as practicable while the vessel is at sea and frozen as soon as practicable upon return to port. Carcasses must be labeled with the name of vessel, location of hooking in latitude and longitude, and the number and color of any leg band if present on the bird. Leg bands must be left attached to the bird. Phone the U.S. Fish and Wildlife Service at 503-231-6179 to arrange for the disposition of dead short-tailed albatross.

(C) All hooked short-tailed albatross must be reported to U.S. Fish and Wildlife Service Law Enforcement by the vessel operator by phoning 360-753-7764 (WA); 503-682-6131 (OR); or 916-414-6660 (CA) as soon as practicable upon the vessel's return to port.

(D) If a NMFS-certified fisheries observer is on board at the time of a hooking event, the observer shall be responsible for the disposition of any captured short-tailed albatross and for reporting to U.S. Fish and Wildlife Service Law Enforcement. Otherwise, the vessel operator shall be responsible.

(2) Gear Requirements. The operator of a vessel identified in paragraph (b)(1) of this section must comply with the following gear requirements:

(i) Snap gear. Vessels using snap gear as defined at §660.11 must deploy a minimum of a single streamer line in accordance with the requirements of paragraphs (c)(3)(i)-(ii) of this section, except as provided in paragraph (c)(2)(iii) of this section.

(ii) Bottom longline. Vessels using bottom longline gear must deploy streamer lines in accordance with the requirements of paragraphs (c)(3)(i) and (c)(3)(iii) of this section, except as provided in paragraph (c)(2)(iii) of this section.

(iii) Weather Safety Exemption. Vessels are exempted from the requirements of paragraph (c)(1)(iii) of this section when a National Weather Service Gale Warning is in effect. This exemption applies only during the time and within the area indicated in the National Weather Service Gale Warning.

(3) Gear performance and material standards:

(i) Material standards for all streamer lines. All streamer lines must:

(A) Have streamers spaced a maximum of every 16 ft 5 in (5 m);

(B) Have individual streamers that hang attached to the mainline to 10 in (0.25 m) above the waterline in the absence of wind.

(C) Have streamers constructed of material that is brightly colored, UV-protected plastic tubing or 3/8 inch polyester line or material of an equivalent density.

(ii) Snap gear streamer standards. For vessels using snap gear, a streamer line must:

(A) Be a minimum length of 147 ft 7 in (45 m).

(B) Be deployed so that streamers are in the air a minimum of 65 ft 7 in (20 m) aft of the stern and within 6 ft 7 in (2 m) horizontally of the point where the main groundline enters the water before the first hook is set.

(iii) Bottom longline streamer line standards. Vessels using bottom longline gear but not snap gear must use paired streamer lines meeting the following requirements:

(A) Streamer lines must be a minimum length of 300 feet (91.4 m);

(B) Streamer lines must be deployed so that streamers are in the air a minimum of 131 ft (40m) aft of the stern for vessels under 100 ft (30.5 m) LOA and 197 ft (60m) aft of the stern for vessels 100 ft (30.5 m) or over.

(C) At least one streamer line must be deployed in accordance with paragraph (c)(3)(iii)(B) before the first hook is set and a second streamer line must be deployed within 90 seconds thereafter.

(D) For vessels deploying bottom longline gear from the stern, the streamer lines must be deployed from the stern, one on each side of the main groundline.

(E) For vessels deploying bottom longline gear from the side, the streamer lines must be deployed from the stern, one over the main groundline and the other on one side of the main groundline.

5. In § 660.140, paragraph (k)(1)(iv) is revised to read as follows:

§ 660.140 Shorebased IFQ Program.

* * * * *

(k) ***

(1) ***

(iv) The vessel must comply with prohibitions applicable to limited entry fixed gear fishery as specified at § 660.212, gear restrictions applicable to limited entry fixed gear as specified in §§ 660.219 and 660.230(b), and management measures specified in § 660.230(d), including restrictions on the fixed gear allowed onboard, its usage, and applicable fixed gear groundfish conservation area restrictions, except that the vessel will not be subject to limited entry fixed gear trip limits when fishing in the Shorebased IFQ Program. Vessels using bottom longline and snap gears as defined at § 660.11 are subject to the requirements of the Seabird Avoidance Program described in § 660.61.

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6. In § 660.230, paragraph (b)(5) is added to read as follows:

§ 660.230 Fixed gear fishery-management measures.

* * * * *

(b) * * *

(5) Vessels fishing with bottom longline and snap gears as defined at § 660.11 are subject to the requirements of the Seabird Avoidance Program described in § 660.61.

* * * * *

7. In § 660.330, paragraph (b)(2)(i) is revised to read as follows:

§ 660.330 Open access fishery-management measures.

* * * * *

(b) * * *

(2) * * *

(i) Fixed gear (longline, trap or pot, set net and stationary hook-and-line gear, including commercial vertical hook-and-line gear) must be attended at least once every 7 days. Vessels fishing with bottom longline and snap gears as defined at § 660.11 are subject to the requirements of the Seabird Avoidance Program described in § 660.61.

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